

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION

10 BOAGF Holdco LP, on behalf of
11 itself and all others similarly situated,
12 Plaintiff,

13 v.

14 TRANSAMERICA LIFE
15 INSURANCE COMPANY,
16 Defendant.

Case No. 2:22-cv-07859-JLS-PD

STIPULATED PROTECTIVE
ORDER¹

17
18 1. A. PURPOSES AND LIMITATIONS

19 Disclosure and discovery activity in this action are likely to involve production
20 of confidential, proprietary, or private information for which special protection from
21 public disclosure and from use for any purpose other than prosecuting this litigation
22 may be warranted. Accordingly, the parties hereby stipulate to and petition the Court
23 to enter the following Stipulated Protective Order (“Order”). The parties
24 acknowledge that this Order does not confer blanket protections on all disclosures or
25 responses to discovery and that the protection it affords from public disclosure and
26

27
28 ¹ This Stipulated Protective Order is substantially based on the model protective
order provided under Magistrate Judge Patricia Donahue’s Procedures.

1 use extends only to the limited information or items that are entitled to confidential
2 treatment under the applicable legal principles.

3 B. GOOD CAUSE STATEMENT

4 Plaintiff's Complaint alleges that Defendant Transamerica Life Insurance
5 Company breached the terms of an insurance policy belonging to Plaintiff, and a
6 putative class of other insurance policies, when it (1) increased Monthly Deduction
7 Rates ("MDRs") even though no future cost factors have changed materially for the
8 worse, and (2) increasing MDRs to recoup past losses. Defendant denies these
9 allegations.

10 Discovery into Plaintiff's allegations may result in the production of
11 documents that disclose confidential information, including personal identifying and
12 health information for individual insureds. Moreover, discovery may result in the
13 production of what Defendant contends includes confidential proprietary and/or
14 trade secret information, including, purely by way of example, Defendant's actuarial
15 methodologies, MDR determination processes, pricing, and profitability for the
16 policies at issue. Defendant takes the position that it incurred significant costs and
17 expenses in developing and maintaining this highly proprietary information and if it
18 were disclosed to Defendant's competitors it would provide them an unfair
19 advantage. It is, according to Defendant, Defendant's policy not to disclose these
20 confidential materials, and Defendant takes the position that it treats such
21 information as confidential in the ordinary course of business, strictly limits
22 disclosure to employees who need to know the information to do their jobs, and
23 prohibits those employees from public disclosure of the information. The Order,
24 permitting both "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL-
25 ATTORNEYS' EYES ONLY" designations, is required to ensure that competitively
26 sensitive information relating to Defendant's performance and operations is not
27 released to the public and competitors, and to ensure that sensitive information
28

1 pertaining to individual insureds is not released on the public docket.

2 C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER SEAL

3 The parties further acknowledge, as set forth in Section 12.3, below, that this
4 Stipulated Protective Order does not entitle them to file confidential information
5 under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and
6 the standards that will be applied when a party seeks permission from the court to
7 file material under seal.

8 There is a strong presumption that the public has a right of access to judicial
9 proceedings and records in civil cases. In connection with non-dispositive motions,
10 good cause must be shown to support a filing under seal. See Kamakana v. City and
11 County of Honolulu, 447 F.3d 1172, 1176 (9th Cir. 2006), Phillips v. Gen. Motors
12 Corp., 307 F.3d 1206, 1210-11 (9th Cir. 2002), Makar-Welbon v. Sony Electronics,
13 Inc., 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require
14 good cause showing), and a specific showing of good cause or compelling reasons
15 with proper evidentiary support and legal justification, must be made with respect to
16 Protected Material that a party seeks to file under seal. The parties' mere designation
17 of Disclosure or Discovery Material as "CONFIDENTIAL" or "HIGHLY
18 CONFIDENTIAL – ATTORNEYS' EYES ONLY" does not—without the
19 submission of competent evidence by declaration, establishing that the material
20 sought to be filed under seal qualifies as confidential, privileged, or otherwise
21 protectable—constitute good cause.

22 Further, if a party requests sealing related to a dispositive motion or trial, then
23 compelling reasons, not only good cause, for the sealing must be shown, and the
24 relief sought shall be narrowly tailored to serve the specific interest to be protected.
25 See Pintos v. Pacific Creditors Ass'n, 605 F.3d 665, 677-79 (9th Cir. 2010). For each
26 item or type of information, document, or thing sought to be filed or introduced under
27 seal in connection with a dispositive motion or trial, the party seeking protection
28

1 must articulate compelling reasons, supported by specific facts and legal
 2 justification, for the requested sealing order. Again, competent evidence supporting
 3 the application to file documents under seal must be provided by declaration.

4 Any document that is not confidential, privileged, or otherwise protectable in
 5 its entirety will not be filed under seal if the confidential portions can be redacted. If
 6 documents can be redacted, then a redacted version for public viewing, omitting only
 7 the confidential, privileged, or otherwise protectable portions of the document, shall
 8 be filed. Any application that seeks to file documents under seal in their entirety
 9 should include an explanation of why redaction is not feasible.

10 2. DEFINITIONS

11 2.1 Acknowledgment: the “Acknowledgment and Agreement to be
 12 Bound” form attached as Exhibit A to this Order.

13 2.2 Action: This pending federal lawsuit, entitled *BOAGF Holdco*
 14 *LP v. Transamerica Life Insurance Company*, Case No. 2:22-cv-7859-JLS-
 15 PD (C.D. Cal.).

16 2.3 Challenging Party: a Party or Non-Party that challenges the
 17 designation of information or items under this Order.

18 2.4 “CONFIDENTIAL” Information or Items: information (regardless of
 19 how it is generated, stored or maintained) or tangible things that qualify for
 20 protection under Federal Rule of Civil Procedure 26(c), and as specified above in the
 21 Good Cause Statement, including without limitation: (1) information protected
 22 pursuant to Federal Rule of Civil Procedure 5.2; (2) information protected by any
 23 federal, California, or other privacy statute, such as the California Right to Financial
 24 Privacy Act; and (3) information protected by an existing contractual obligation
 25 requiring the Designating Party to maintain the confidentiality of the information.
 26 Nothing in this paragraph shall preclude a Party from redacting personal information,
 27 including social security numbers or dates of birth, as required by governing law or
 28

1 contract or otherwise pursuant to the applicable policies of the Party.

2 2.5 Counsel (without qualifier): Outside Counsel of Record and House
3 Counsel, as well as their support staff, including but not limited to attorneys,
4 paralegals, secretaries, law clerks, and investigators.

5 2.6 Designating Party: a Party or Non-Party that designates information or
6 items that it produces in disclosures or in responses to discovery as
7 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
8 ONLY.”

9 2.7 Disclosure or Discovery Material: all items or information, regardless
10 of the medium or manner in which it is generated, stored, or maintained (including,
11 among other things, testimony, transcripts, and tangible things), that are produced or
12 generated in disclosures or responses to discovery in this matter.

13 2.8 Expert: a person with specialized knowledge or experience in a matter
14 pertinent to the litigation, along with his or her employees and support personnel,
15 who has been retained by a Party or its counsel to serve as an expert witness or as a
16 consultant in this Action. This definition includes a professional jury or trial
17 consultant retained in connection with this Action.

18 2.9 “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
19 Information or Items: Extremely sensitive “Confidential” information or items,
20 disclosure of which to another Party or Non-Party would create a substantial risk of
21 serious harm that could not be avoided by less restrictive means.

22 2.10 House Counsel: attorneys who are employees of a party to this Action,
23 any affiliate thereof, or of any entity that owns an interest in a Party and is responsible
24 for controlling, directing, or advising on the Action. House Counsel does not include
25 Outside Counsel of Record or any other outside counsel.

26 2.11 Non-Party: any natural person, partnership, corporation, association, or
27 other legal entity not named as a Party to this action.

1 2.12 Outside Counsel of Record: attorneys, as well as their support staff
 2 (including but not limited to paralegals, secretaries, law clerks, and investigators),
 3 who are not employees of a Party but are retained by a Party to represent or advise a
 4 Party to this Action and (1) have appeared in this Action on behalf of that Party, or
 5 (2) are affiliated with a law firm which has appeared on behalf of that Party.

6 2.13 Party: any party to this Action, including all of its officers, directors,
 7 employees, consultants, retained experts, and Outside Counsel of Record (and their
 8 support staffs).

9 2.14 Producing Party: a Party or Non-Party that produces Disclosure or
 10 Discovery Material in this Action.

11 2.15 Professional Vendors: persons or entities that provide litigation
 12 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
 13 demonstrations, and organizing, storing, or retrieving data in any form or medium)
 14 and their employees and subcontractors.

15 2.16 Protected Material: any Disclosure or Discovery Material that is
 16 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’
 17 EYES ONLY.”

18 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material
 19 from a Producing Party.

20 21 3. SCOPE

22 3.1 The protections conferred by this Stipulation and Order cover not only
 23 Protected Material (as defined above), but also (1) any information copied or
 24 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 25 compilations of Protected Material; and (3) any testimony, conversations, or
 26 presentations by Parties or their Counsel that might reveal Protected Material.

27 3.2 However, the protections conferred by this Stipulation and Order do not
 28

1 cover the following: (1) any information that is in the public domain at the time of
2 disclosure to a Receiving Party or becomes part of the public domain after its
3 disclosure to a Receiving Party as a result of publication not involving a violation of
4 this Order, including becoming part of the public record through trial or otherwise;
5 (2) any information known to the Receiving Party prior to the disclosure or obtained
6 by the Receiving Party after the disclosure from a source who obtained the
7 information lawfully and under no obligation of confidentiality to the Designating
8 Party—though this provision does not apply to materials previously produced by
9 Defendant to Plaintiff pursuant to Federal Rule of Evidence 408; and (3) any
10 information obtained outside of litigation with the consent of the Producing Party.
11 Any use of Protected Material at trial shall be governed by a separate agreement or
12 order.

13 3.3 Nothing in this Order shall prevent or restrict a Producing Party's own
14 disclosure or use of its own Protected Material for any purpose.

15 3.4 Nothing in this Order shall be construed to prejudice any Party's right
16 to use any Protected Material in court or in any court filing with the written consent
17 of the Designating Party or by order of the Court in accordance with Civil Local Rule
18 79-5.

19 3.5 This Order is without prejudice to the right of any Party to seek further
20 or additional protection of any Discovery Material or to modify this Order in any
21 way, including, without limitation, an order that certain matter not be produced at
22 all.

23 3.6 Nothing in this Order shall be construed to prevent Counsel from
24 advising their clients with respect to this case based in whole or in part upon
25 Protected Materials, provided counsel does not disclose the Protected Material itself
26 except as provided in this Order.
27
28

1 4. DURATION

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this action, with
6 or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
8 including the time limits for filing any motions or applications for extension of time
9 pursuant to applicable law.

10
11 5. DESIGNATING PROTECTED MATERIAL

12 5.1 Exercise of Restraint and Care in Designating Material for Protection.

13 Each Party or Non-Party that designates information or items for protection under
14 this Order must take care to limit any such designation to specific material that
15 qualifies under this Order. If only a portion or portions of material, documents, items,
16 or oral or written communications qualify under this Order, the Designating Party,
17 to the extent practicable, shall designate only the portion or portions for protection -
18 so that other portions of the material, documents, items, or communications for
19 which protection is not warranted are not swept unjustifiably within the ambit of this
20 Order. For purposes of clarity, however, a Party may designate an entire document
21 if a portion of that document qualifies for protection under this Order. Such
22 designation shall not, however, automatically extend to any attached or related
23 documents unless those documents separately qualify for protection.

24 A Designating Party shall not make unjustified designations or designations
25 for an improper purpose (e.g., to unnecessarily encumber or retard the case
26 development process or to impose unnecessary expenses and burdens on other
27 parties).

1 If it comes to a Designating Party's attention that information or items that it
2 designated for protection do not qualify for protection at all or do not qualify for the
3 asserted level of protection, that Designating Party must within a reasonable time
4 notify all other Parties that it is withdrawing the mistaken designation and re-produce
5 material with the correct designation.

6 5.2 Manner and Timing of Designations. Except as otherwise provided in
7 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
8 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
9 under this Order must be clearly so designated before the material is disclosed or
10 produced.

11 Designation in conformity with this Order requires:

12 (a) for information in documentary form (e.g., paper or electronic
13 documents, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or
15 "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" to each page that
16 contains protected material. If only a portion or portions of the material on a page
17 qualifies for protection, the Producing Party also must clearly identify the protected
18 portion(s) (e.g., by making appropriate markings in the margins).

19 A Party or Non-Party that makes original documents available for inspection
20 need not designate them for protection until after the inspecting Party has indicated
21 which documents it would like copied and produced. During the inspection and
22 before the designation, all of the material made available for inspection shall be
23 deemed "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY." After the
24 inspecting Party has identified the documents it wants copied and produced, the
25 Producing Party must determine which documents, or portions thereof, qualify for
26 protection under this Order. Then, before producing the specified documents, the
27 Producing Party must affix the "CONFIDENTIAL" or "HIGHLY
28

1 CONFIDENTIAL-ATTORNEYS' EYES ONLY" legend to each page that contains
2 Protected Material. Such designations shall be made in accordance with the
3 provisions of this Order, including, but not limited to, Paragraph 5.1.

4 (b) for testimony given in depositions, that any party or testifying persons
5 or entities designate relevant portions of the testimony or exhibits
6 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES
7 ONLY" either on the record before the close of the deposition or in writing to all
8 Outside Counsel of Record on or before the later of (1) thirty (30) days after receipt
9 of the final transcript, or (2) the deadline for submission of errata and/or the
10 deponent's signature. Only those portions of the testimony that are designated for
11 protection shall be covered by the provisions of this Order. If any portion of a
12 videotaped deposition is designated, the original and all copies of any videocassette,
13 videotape, DVD or other media container shall be labeled with the appropriate legend.
14 Pending designation as set forth above, the entire transcript, including exhibits, shall
15 be deemed "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY." If no
16 designation is made within the time period above, the transcript shall be considered
17 not to contain any Protected Material.

18 Transcript pages containing Protected Material must have affixed to each
19 such page the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-
20 ATTORNEYS' EYES ONLY" as instructed by the Designating Party.

21 Any Protected Material that is used in the taking of a deposition shall remain
22 subject to the provisions of this Order, along with the transcript pages and videotape
23 of the deposition testimony dealing with such Protected Material, so long as so
24 designated by the Producing Party pursuant to Section 5.4(b). Counsel for any
25 Producing Party shall have the right to exclude from oral depositions, other than the
26 deponent and deponent's Counsel, any person who is not authorized by this Protective
27 Order to receive or access protected Material based on the designation of such
28

1 Protected Material, unless that person signs the Acknowledgment. Such right of
2 exclusion shall be applicable only during periods of examination or testimony
3 regarding such Protected Material.

4 (c) for all other information or tangible items, that the Producing Party affix
5 in a prominent place on the exterior of the container or containers in which the
6 information is stored the legend "CONFIDENTIAL" or "HIGHLY
7 CONFIDENTIAL-ATTORNEYS' EYES ONLY." Such designation shall be made
8 in accordance with the provisions of this Order, including, but not limited to,
9 Paragraph 5.1.

10 5.3 Inadvertent Failures to Designate. If a Producing Party discovers that
11 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL ATTORNEYS' EYES
12 ONLY" information or items that it produced were not designated as Protected
13 Material, the Producing Party may notify all other Parties of the error and identify
14 the affected information or items and their new designation. Thereafter, the
15 information or items so designated will be treated as Protected Material. After
16 providing such notice, the Producing Party shall provide re-labeled copies of the
17 information or items to each Receiving Party reflecting the change in designation.

18 An inadvertent failure to designate qualified information or items does not,
19 standing alone, waive the Designating Party's right to secure protection under this
20 Order for such material. Upon correction of a designation, the Receiving Party must
21 make reasonable efforts to assure that the material is treated in accordance with the
22 provisions of this Order. Upon receiving the Protected Material with the correct
23 confidentiality designation, the Receiving Parties shall return or securely destroy, at
24 the Receiving Parties' option, all Discovery Material reasonably accessible to the
25 Receiving Party that was not designated properly. Unauthorized or inadvertent
26 disclosure does not change the status of Discovery Material or waive the right to hold
27 the disclosed document or information as Protected Material.

1 5.4 Protected Health Information. Additionally, certain Confidential
2 Information or Items may be Protected Health Information (“PHI”) as defined by the
3 Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the
4 regulations promulgated thereunder at 45 C.F.R. 160.103. Without limiting the
5 generality of the foregoing, “PHI” includes, but is not limited to, health information,
6 including demographic information, relating to either (a) the past, present, or future
7 physical or mental condition of an individual, (b) the provision of care to an
8 individual, or (c) the payment for care provided to an individual, which identifies the
9 individual or which reasonably could be expected to identify an individual. All
10 “covered entities” (as defined by 45 C.F.R. 160.103) are hereby authorized to
11 disclose PHI to all attorneys now of record in this Action or who may become of
12 record in the future in this Action. Subject to the Federal rules of Civil Procedure,
13 and without prejudice to any Party’s objection except as otherwise provided herein,
14 the Parties are authorized to receive, subpoena, transmit, or disclose PHI relevant to
15 the claims at issue in this Action, subject to all terms of this Order. All PHI disclosed
16 under this Order must be designated as Confidential Information pursuant to this
17 Order. A Receiving Party which receives PHI in discovery shall not use or disclose
18 such PHI for any purpose other than this Action. To the extent documents or
19 information produced in this Action have already been exchanged or will again be
20 exchanged between the Parties in the normal course of business, treatment of such
21 documents prior to or after the conclusion of this Action shall be governed by this
22 Order.

23 5.5 Specific Provisions Concerning the Disclosure of Personally
24 Identifiable Information (“PII”). When PII (*e.g.*, names, addresses, Social Security
25 numbers, phone numbers, etc.) is disclosed between the Parties as authorized by this
26 Order, the PII of each individual whose claims are not at issue in this Action and
27 who are otherwise identified in the Discovery material may either be redacted to
28

1 protect the identify of such individuals, or produced without redactions. Upon receipt
 2 of any PII, a Receiving Party shall take all reasonable measures necessary for
 3 protecting the PII from unauthorized disclosure as required under both state and
 4 federal law.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
 7 designation of confidentiality at any time that is consistent with the Court's
 8 Scheduling Order. A Party does not waive its right to challenge a confidentiality
 9 designation by not challenging a designation promptly after the original designation
 10 is disclosed.

11 6.2 Procedure. The Challenging Party shall initiate the dispute resolution
 12 process by serving upon counsel for the Designating Party a written notice stating
 13 the grounds of the objection consistent with Local Rule 37.1 et seq. The Parties
 14 and/or Non-Parties shall make a good faith effort to resolve any disagreement
 15 concerning the confidentiality designations. If the Parties and/or non-parties cannot
 16 resolve the matter within fourteen (14) days of the written notice, the Designating
 17 Party must e-mail the chambers of Magistrate Judge Donahue, pursuant to her
 18 procedures, and thereafter, a motion to the Court for resolution pursuant to Local
 19 Rule 37-2 if so ordered.

20 6.3 The burden of persuasion in any such challenge proceeding shall be on
 21 the Designating Party. All parties shall continue to afford the material in question the
 22 level of protection to which it is entitled under the Producing Party's designation
 23 until the Court rules on the challenge.

24 7. ACCESS TO AND USE OF PROTECTED MATERIAL

25 7.1 Basic Principles. A Receiving Party may use Protected Material that is
 26 disclosed or produced by another Party or by a Non-Party in connection with this
 27
 28

1 Action only for prosecuting, defending, or attempting to settle this Action or related
2 appellate proceeding, and not for any other purpose whatsoever. Such Protected
3 Material may be disclosed only to the categories of persons and under the conditions
4 described in this Order. When the Action has been terminated, a Receiving Party
5 must comply with the provisions of section 13 below (FINAL DISPOSITION).

6
7 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
8 otherwise ordered by the court or permitted in writing by the Designating Party, a
9 Receiving Party may disclose any information or item designated
10 “CONFIDENTIAL” only to:

11 (a) the Receiving Party’s Outside Counsel of Record in this Action,
12 including attorneys who are principals of, employed by, or working for said Outside
13 Counsel of Record, as well as non-attorney employees and contractors of said
14 Outside Counsel of Record to whom it is reasonably necessary to disclose the
15 information for this litigation;

16 (b) the Receiving Party, including officers, directors, and employees
17 (including House Counsel and their paralegal and litigation support staff) of the
18 Receiving Party to whom disclosure is reasonably necessary for this Action, as well
19 as the Receiving Party’s parents and affiliates and their respective officers, directors,
20 consultants, advisors, insurers, and/or reinsurers (1) to whom disclosure is
21 reasonably necessary for this Action, and (2) who have signed the Acknowledgment;

22 (c) Experts (as defined in this Order) retained by the Receiving Party to
23 assist in this action, provided that disclosure is only to the extent reasonably
24 necessary to perform such work and provided that (1) such Expert has signed the
25 Acknowledgment; and (2) such Expert is not a current officer, director, or employee
26 of a Party or of a competitor of a Party, nor is anticipated at the time of retention to
27 become an officer, director, or employee of a Party or of a competitor of a Party;

1 (d) the court and its personnel;

2 (e) court reporters, stenographers, and videographers retained to record
3 testimony in this action and their staff, professional jury or trial consultants, and
4 Professional Vendors to whom disclosure is reasonably necessary for this litigation;

5 (f) during their deposition, witnesses and attorneys for witnesses in the
6 Action to whom disclosure is reasonably necessary provided the witness signs the
7 Acknowledgment. The author or recipient of a document containing Protected
8 Material need not sign the Acknowledgment if they are a deponent. Pages of
9 transcribed deposition testimony or exhibits to depositions that reveal Protected
10 Material must not be disclosed to anyone except as permitted under this Order;

11 (g) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information;

13 (h) mock jurors who have signed the Acknowledgment;

14 (i) any mediator, and his or her staff, who is assigned to hear this matter;
15 and

16 (j) with the prior consent of the Producing Party, any other person who has
17 signed the Acknowledgment.

18 7.3 Disclosure of “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
19 ONLY” Information or Items. Unless otherwise ordered by the Court or permitted
20 in writing by the Designating Party, a Receiving Party may disclose any information
21 or item designated “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
22 only toto:

23 (a) the Receiving Party’s Outside Counsel of Record in this Action, as well
24 as employees of said Outside Counsel of Record to whom it is reasonably necessary
25 to disclose the information for this Action;

26 (b) House Counsel and up to five additional officers, directors, employees,
27 consultants, advisors, insurers, and/or reinsurers of a Party. A House Counsel who
28

1 is a member of the Bar of any state in the United States need not sign the
2 Acknowledgment;

3 (c) Experts (as defined in this Order) of the Receiving Party to whom
4 disclosure is reasonably necessary for this Action and who have signed the
5 Acknowledgment;

6 (d) the Court and its personnel;

7 (e) court reporters and their staff;

8 (f) professional jury or trial consultants, mock jurors, and Professional
9 Vendors to whom disclosure is reasonably necessary for this Action and who have
10 signed the Acknowledgment;

11 (g) the author or recipient of a document containing the information or a
12 custodian or other person who otherwise possessed or knew the information;

13 (h) during their depositions, witnesses, and attorneys for witnesses, in the
14 Action to whom disclosure is reasonably necessary, provided the witness signs the
15 Acknowledgment;

16 (i) any mediator or settlement officer, and their supporting personnel,
17 mutually agreed upon by any of the parties engaged in settlement discussions and
18 who have signed the Acknowledgment; and

19 (j) with the prior written consent of the Producing Party, any other person
20 who has signed the Acknowledgment.

21
22 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
23 IN OTHER LITIGATION

24 If a Party is served with a document request, investigatory demand for
25 documents, subpoena or a court order (“Document Demand”) issued in other
26 litigation that compels disclosure of any information or items designated in this
27 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’
28

1 EYES ONLY,” that Party must:

2 (a) promptly notify in writing the Designating Party. Such notification shall
3 include a copy of the Document Demand;

4 (b) promptly notify in writing the party who caused the Document Demand
5 to issue in the other litigation that some or all of the material covered by the
6 Document Demand is subject to this Protective Order. Such notification shall include
7 a copy of this Stipulated Protective Order; and

8 (c) cooperate with respect to all reasonable procedures sought to be pursued
9 by the Designating Party whose Protected Material may be affected.

10 If the Designating Party timely seeks a protective order, the Party served
11 with the Document Demand shall not produce any information designated in this
12 action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’
13 EYES ONLY” before a determination by the court from which the subpoena or order
14 issued, unless the Party has obtained the Designating Party’s permission. The
15 Designating Party shall bear the burden and expense of seeking protection in that
16 court of its Protected Material. Nothing in these provisions should be construed as
17 directing, authorizing, or requiring a Receiving Party in this Action to disobey a
18 lawful order of any court.

19
20
21 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
22 PRODUCED IN THIS LITIGATION

23 (a) Any subpoena to a Non-Party for documents or deposition testimony
24 shall provide such Non-Party a copy of this Order. The terms of this Order are
25 applicable to information produced by a Non-Party in this Action and designated as
26 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
27 ONLY.” Such information produced by Non-Parties in connection with this
28

litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession or control, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of this Order and the relevant discovery request(s); and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.² Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed

² The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality.

1 Protected Material to any person or in any circumstance not authorized under this
2 Order, the Receiving Party must immediately (1) notify in writing the Designating
3 Party of the unauthorized disclosures, (2) use its best efforts to retrieve all
4 unauthorized copies of the Protected Material, (3) inform the person or persons to
5 whom unauthorized disclosures were made of all the terms of this Order, and (4)
6 request such person or persons to execute the Acknowledgment.

7
8 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
9 PROTECTED MATERIAL

10 Pursuant to Federal Rule of Evidence 502(d) and (e), the Parties agree that if
11 information subject to a claim of attorney-client privilege, work product protection
12 or other privilege or protection is inadvertently produced, such production shall not
13 constitute automatic waiver of such privilege or protection either as to the specific
14 information disclosed or as to any other information relating thereto on the same or
15 related subject matter. The use at deposition of a document or other information with
16 no clear facial indication that it is privileged or protected does not constitute a waiver
17 of such privilege or protection either as to the specific information disclosed or as to
18 any other information relating thereto on the same or related subject matter. Within
19 21 days of learning of an inadvertent or unintentional disclosure of privileged
20 information, the Producing Party shall give notice to Receiving Parties that certain
21 inadvertently produced material is subject to a claim of privilege or other protection,
22 and the obligations of the Receiving Parties are those set forth in the Federal Rules
23 of Civil Procedure and the Federal Rules of Evidence. *See* Fed. R. Civ. P.
24 26(b)(5)(B); Fed. R. Evid. 502(d)-(e).

25 If the Receiving Party intends to challenge the assertion of privilege, it must
26 provide written notice of its intent to do so to the Producing Party within 10 business
27 days of the date of the Producing Party's written notice of the inadvertent disclosure.

1 The Receiving Party shall initiate the dispute resolution process under Local Rule
2 37-1 within ten (10) business days of services of the Receiving Party's notice
3 disputing a claim of inadvertent production.

4 If the Parties cannot resolve a challenge without court intervention, the
5 Receiving Party may move the Court for an order compelling production of any
6 inadvertently produced or disclosed document or material in compliance with Local
7 Rule 37, but the motion shall not assert as a ground for production the fact of the
8 inadvertent production or disclosure. Pending the Court's ruling, the party
9 challenging the assertion of privilege shall sequester the affected documents and
10 materials and shall not make any use of such information.

11
12 12. MISCELLANEOUS

13 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
14 person to seek its modification by the Court in the future.

15 12.2 Right to Assert Other Objections. By stipulating to the entry of this
16 Order, no Party waives any right it otherwise would have to object to disclosing or
17 producing any information or item on any ground not addressed in this Order.
18 Similarly, no Party waives any right to object on any ground to use in evidence of
19 any of the material covered by this Order. Neither this Order nor the production of
20 Protected Material shall be deemed a concession or determination of the relevance,
21 materiality, or admissibility of such Protected Material.

22 12.3 Filing Protected Material. Without written permission from the
23 Designating Party or a court order secured after appropriate notice to all interested
24 persons, a Party may not file in the public record in this action any Protected
25 Material. A Party that seeks to file under seal any Protected Material must comply
26 with Civil Local Rule 79-5.

27 12.4 Termination of Matter and Retention of Jurisdiction. The Parties agree
28

1 that the terms of this Protective Order shall survive and remain in effect after the
2 Final Disposition of the above captioned matter. The Court shall retain jurisdiction
3 after Final Disposition of this matter to hear and resolve any disputes arising out of
4 this Protective Order.

5 12.5 Successors. This Order shall be binding upon the Parties hereto, their
6 attorneys, and their successors, executors, personal representatives, administrators,
7 legal representatives, assigns, subsidiaries, divisions, employees, agents, retained
8 consultants and experts, and any persons or organizations over which they have
9 direct control.

10 12.6 Burdens of Proof. Notwithstanding anything to the contrary above,
11 nothing in this Protective Order shall be construed to change the burdens of proof or
12 legal standards applicable in disputes regarding whether particular Discovery
13 Material is confidential, whether disclosure should be restricted, and if so, what
14 restrictions should apply.

15 12.7 Modification by Court. This Order is subject to further court order based
16 upon public policy or other considerations, and the Court may modify this Order sua
17 sponte in the interests of justice.

18 19 13. FINAL DISPOSITION

20 Within 60 days after the final disposition of this Action, as defined in
21 paragraph 4, each Receiving Party must return all Protected Material to the
22 Producing Party or destroy such material. As used in this subdivision, "all Protected
23 Material" includes all copies, abstracts, compilations, summaries, and any other
24 format reproducing or capturing any of the Protected Material. Whether the Protected
25 Material is returned or destroyed, the Receiving Party must submit a written
26 certification to the Producing Party (and, if not the same person or entity, to the
27 Designating Party) by the 60 day deadline that (1) identifies (by category, where
28

1 appropriate) all the Protected Material that was returned or destroyed and (2) affirms
2 that the Receiving Party has not retained any copies, abstracts, compilations,
3 summaries or any other format reproducing or capturing any of the Protected
4 Material. Notwithstanding the foregoing, the Parties are not required to delete
5 information that may reside on their respective electronic back-up systems that are
6 over-written in the normal course of business, and Counsel are entitled to retain an
7 archival copy of all pleadings, motion papers, trial, deposition, and hearing
8 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
9 reports, attorney work product, and consultant and expert work product, even if such
10 materials contain Protected Material. Any such archival copies that contain or
11 constitute Protected Material remain subject to this Protective Order as set forth in
12 Section 4.

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2
3 DATED: February 8, 2023

4
5 /s/Erin B. Taylor

6 Thomas F.A. Hetherington*
7 tom.hetherington@mhllp.com

8 Jarrett E. Ganer*
9 jarrett.ganer@mhllp.com

10 Erin B. Taylor*
11 erin.taylor@mhllp.com

12 Hutson B. Smelley*
13 hutson.smelley@mhllp.com

14 Micah A. Grodin*
15 micah.grodin@mhllp.com

16 **MCDOWELL HETHERINGTON**
17 **LLP**

18 1001 Fannin Street, Suite 2400
19 Houston, TX 77002

20 Telephone: 713-337-5580

21 Facsimile: 713-337-8850

22 *Admitted Pro Hac Vice or Pro Hac
23 Vice motion filed

24
25 *Attorneys for Defendant*

/s/Jasjaap Sidhu

Steven Sklaver (237612)

ssklaver@susmangodfrey.com

Michael Gervais (330731)

mgervais@susmangodfrey.com

Glenn Bridgman (298134)

gbridgman@susmangodfrey.com

Jasjaap Sidhu (335862)

jsidhu@susmangodfrey.com

SUSMAN GODFREY L.L.P.

1900 Avenue of the Stars, 14th Floor

Los Angeles, CA 90067

Telephone: (310) 789-3100

Facsimile: (310) 789-3150

Seth Ard (pro hac vice)

sard@susmangodfrey.com

Ryan C. Kirkpatrick (243824)

rkirkpatrick@susmangodfrey.com

SUSMAN GODFREY L.L.P.

1301 Avenue of the Americas, 32nd
Floor

New York, NY 10019

Tel.: 212-336-8330

Fax: 212-336-8340

Attorneys for Plaintiff

1 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**

2
3 DATED: February 09, 2023

4 

5 _____
6 Patricia Donahue
7 United States Magistrate Judge
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury
that I have read in its entirety and understand the Stipulated Protective Order that
was issued by the United States District Court for the Central District of California
on _____ [date] in the case of *BOAGF Holdco LP v. Transamerica Life
Insurance Company*, Case No. 2:22-cv-7859-JLS-PD. I agree to comply with and
to be bound by all the terms of this Stipulated Protective Order and I understand
and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose
in any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____